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**New England Electric Resources, Inc. et al. (70-8513)**

New England Electric System ("NEES"), a registered holding company, and its nonutility subsidiary company, New England Electric Resources, Inc. ("NEERI"), both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 40 and 45 thereunder.

By orders dated September 4, 1992, April 1, 1994 and May 25, 1994 (HCAR Nos. 25621, 26017 and 26057, respectively), NEES was authorized to capitalize NEERI in amounts of up to \$2.5 million. By the same orders, NEERI was authorized to: (1) Enter into the business of performing consulting services on electric utility matters for nonaffiliates; (2) provide electrical related services for nonaffiliates; and (3) invest in a start-up company formed to develop, manufacture and market a low harmonic distortion uninterruptible power supply.

NEERI now seeks authority, through 1998, to invest up to \$10 million in research and development activities in connection with environmental, new electrical generation and transmission technologies, and electric end-use technologies, NEERI will not acquire any securities in connection with its research and development activities without further Commission approval. NEES seeks authority for the same period to provide additional financing for NEERI in an amount not to exceed \$10 million through non-interest bearing subordinated loans or capital contributions. NEES' request to capitalize NEERI is in addition to its pending request to provide additional financing to NEERI in amounts of up to \$11.7 million in S.E.C. File No. 70-8475.

Further, in order to allow NEERI to acquire securities in local enterprises pursuant to Rule 40(a)(5) under the Act, NEES also seeks authority to provide additional financing for NEERI in an annual aggregate amount not to exceed \$1 million through non-interest bearing subordinated loans or capital contributions, also through 1998.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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[Rel. No. IC-20866; No. 812-9336]

**State Mutual Life Assurance Company of America, et al.**

January 27, 1995.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** State Mutual Life Assurance Company of America ("State Mutual"), Separate Account VA-P of State Mutual Life Assurance Company of America ("State Mutual Account"), SMA Life Assurance Company ("SMA Life," together with State Mutual, the "Insurance Companies"), Separate Account VA-P of SMA Life Assurance Company ("SMA Life Account") and other separate accounts established by the Insurance Companies in the future to support certain deferred variable annuity contracts issued by the Insurance Companies ("Other Accounts," together with the State Mutual Account and the SMA Life Account, the "Accounts").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2).

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of: (a) The Accounts in connection with the offer and sale of certain variable annuity contracts ("Annuity Contracts"); (b) the Accounts in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts," together with Annuity Contracts, the "Contracts"); and (c) any other separate account established in the future by the Insurance Companies in connection with the issuance of Contracts.

**FILING DATE:** The application was filed on November 22, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 21, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues

contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Joseph W. MacDougall, Jr., State Mutual Life Assurance Company of America, 440 Lincoln Street, Worcester, Massachusetts, 01653.

**FOR FURTHER INFORMATION CONTACT:**

Kevin Kirchoff, Senior Attorney, or Wendy Friedlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

**Applicants' Representations**

1. State Mutual is a mutual life insurance company incorporated under the laws of Massachusetts. SMA Life, a wholly-owned subsidiary of State Mutual, is a stock life insurance company organized under the provisions of the Delaware Insurance Code. SMA Life is registered as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the National Association of Securities Dealers ("NASD"). State Mutual is authorized to conduct business as an insurance company in all states and in the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

2. The Accounts are separate investment accounts established by the Insurance Companies for the purpose of investing purchase payments received under the Contracts. Each of the Accounts is a unit investment trust which has filed a registration statement on Form N-4 under the Securities Act of 1933 to register the offering of the Contracts, and the Applicants incorporate such registration statements into the application by reference.

Each Account presently consists of seven Subaccounts, each of which will invest solely in the shares of one of the portfolios of the Pioneer Variable Contracts Trust. Contract owners may invest in any one or more of the Subaccounts, and may also invest in the fixed account, part of the general account of the respective Insurance Companies. The Insurance Companies may, in the future, issue through the Accounts, and through other separate accounts that they may establish in the future, other variable annuity contracts that are substantially similar in all material respects to the Annuity Contracts.

3. Pioneer Variable Contracts Trust is a diversified open-end management investment company which consists of various investment series or portfolios (collectively, "Portfolios") with different investment objectives and policies. Shares of the Portfolios are purchased by the Insurance Companies for the corresponding Subaccounts at the net asset value. Shares of the Portfolios also are offered to other affiliated or unaffiliated separate accounts of the Insurance Companies or of other insurance companies offering variable annuity or variable life insurance contracts.

4. Allmerica Investments, Inc., an indirect wholly-owned subsidiary of State Mutual, is registered as a broker-dealer under the 1934 Act and is a member of the NASD. Allmerica Investments, Inc. is the principal underwriter for the Contracts.

5. The Contracts are group and individual combination fixed and variable contracts designed for use in retirement plans which qualify for special federal income tax treatment under sections 401, 403(b), 408 and 457 of the Internal Revenue Code and in retirement plans which do not qualify for special tax treatment under those sections.

6. The Contracts provide for minimum initial purchase payments and permit additional minimum purchase payments and periodic payments, subject to certain limitations. The Contracts provide for the accumulation of values on a variable basis determined by the investment experience of the Portfolios to which the Contract owner allocates payments.

7. The Contracts also provide for the payment of a death benefit. The death benefit, payable in a single sum or under an optional method of settlement, is provided if the annuitant dies before the maturity, surrender, or termination of a Contract. Upon the death of the annuitant, the death benefit is equal to the greatest of (a) the accumulated value under the Contract next determined following receipt of due proof of death at the Insurance Companies' principal office, or (b) the total amount of gross payments made under the Contracts reduced proportionally to reflect the amount of all prior partial withdrawals, or (c) the death benefit that would have been payable on the most recent fifth interval policy anniversary, increased for subsequent purchase payments and reduced proportionally to reflect withdrawals after that date.

8. Various fees and expenses are deducted under the Contracts. Prior to a Contract's maturity, the Insurance Companies assess a Contract Fee of \$30,

at each Contract anniversary and at full surrender during a contract year for its costs in maintaining each Contract and the Accounts. The Insurance Companies make a daily charge to the Subaccounts of the Accounts equal on an annual basis to 0.15% of the current value of the Subaccounts ("Administrative Service Charge"). The Administrative Service Charge is designed to cover actual administrative expenses which exceed the revenue for the Contract Fee. Applicants represent that the Administrative Service Charge and the Contract Fee have been set at a level that will recover no more than the actual costs associated with administering the Contract and the Accounts. The Insurance Companies do not expect to realize a profit from these charges, and guarantee that the amount of the charges will not increase over the life of the Contract.

9. The Insurance Companies will deduct any premium tax levied by any governmental entity as a result of the Contracts or the Accounts. Applicants state that, where permitted by state law, the premium taxes will be deducted upon annuitization. In all other jurisdictions, the taxes will be deducted upon the death of the annuitant, surrender, or withdrawal, as may be required by the law of the Contract owner's state of residence.

10. Prior to the Annuity Commencement date, amounts held under the Contracts may be transferred among the Subaccounts and the respective Insurance Company's general account. The Insurance Companies currently make no charge for transfers among the accounts, but reserve the right to assess a charge, guaranteed never to exceed \$25.

11. Applicants represent that the Insurance Companies will deduct the annual Contract Fee, the annual Administrative Service Charge, and any Transfer Charge in reliance upon and in conformity with all of the requirements of Rule 26a-1 under the 1940 Act.

12. No sales charges are deducted from premium payments under the Contracts. The Contracts assess a Contingent Deferred Sales Charge ("CDSC") which is applied in the case of contract surrender, partial redemptions or annuitization under period certain options during the seven year period from the date the Insurance Companies receive and accept each purchase payment. The CDSC is determined by the number of Contract anniversaries that have passed since the purchase payment that is being withdrawn was made. The CDSC is computed as follows:

Years from date of payment to date of withdrawal	Withdrawal charge (percent)
0-3 .....	7
4 .....	6
5 .....	5
6 .....	4
7 .....	3
More than 7 .....	None

In no event will the Contingent Deferred Sales Charges assessed against a Contract exceed 8% of the gross purchase payments.

The Insurance Companies do not anticipate that the CDSC will generate sufficient revenues to pay the cost of distributing the Contracts. If this charge is insufficient to cover the expenses, the deficiency will be met from the Insurance Companies' general account assets, which may include amounts derived from the charge for mortality and expenses risks, discussed below.

13. A daily charge equal to an effective annual rate of 1.25% of the net asset value of the Accounts will be imposed to compensate the Insurance Companies for bearing certain mortality and expenses risks in connection with the Contracts. Of this amount, approximately 0.80% is allocable to mortality risks and approximately 0.45% is allocable to expense risks. The mortality and expense risk charge is guaranteed never to exceed 1.25%. This charge may be a source of profit for the Insurance Companies which will be added to their surplus and may be used for, among other things, the payment of distribution expenses.

14. The mortality risk arises from the Insurance Companies' (1) Guarantee that they will make annuity payments, in accordance with annuity rate provisions established at the time a Contract is issued for the life of the annuitant or in accordance with the annuity option selected, no matter how long the annuitant or other payee lives and no matter how long all annuitants as a class live, and (2) death benefit guarantees under the Contracts.

15. The expense risk borne by the Insurance Companies is the risk that the charges for administrative expenses, which are guaranteed not to increase for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts.

#### **Applicants' Legal Analysis and Conditions**

1. Applicants request an order of the Commission under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a maximum charge of

1.25% for the assumption of mortality and expense risks from the assets of: (a) The Accounts in connection with the issuance of the Annuity Contracts; (b) the Accounts in connection with the issuance of any Future Contracts; and (c) any other separate account established in the future by the Insurance Companies in connection with the issuance of Future Contracts. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that their request for exemptive relief for deduction of the 1.25% mortality and expense risk charge from the assets of the Accounts, or any other separate account established by the Insurance Companies in the future, in connection with the issuance of Future Contracts, would promote competitiveness in the variable annuity contract market by eliminating the need for the Insurance Companies to file redundant exemptive applications, thereby reducing the Insurance Companies' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair the Insurance Companies' ability effectively to take advantage of business opportunities as they arise. Further, if the Insurance Companies were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

3. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are

deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of similar industry products, taking into account such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Applicants represent that the Insurance Companies will maintain at their home offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, their comparative survey.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. The Insurance Companies have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by the Insurance Companies at their administrative offices and will be made available to the Commission.

7. Applicants also represent that the Accounts will invest only in underlying open-end management investment companies which undertake, in the event they should adopt a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not "interested persons" of such company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

#### Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### **Regional Liaison Outreach and Services Program (L.O.S.P.); Announcement of Request for Proposals (RFP)**

**SUMMARY:** The Department of Transportation's Office of Small and Disadvantaged Business Utilization (O.S.D.B.U.) is responsible for the Department's implementation and execution of the functions and duties under sections eight (8) and fifteen (15) of the Small Business Act (15 U.S.C. 637) for developing policies and procedures consistent with Federal statutes to provide policy direction for minority, women-owned, small, and disadvantaged business (S/DBE) participation in the Department's procurement and Federal financial assistance activities. The office is also responsible for implementing and monitoring the Department's goals for minority, women-owned and small and disadvantaged businesses. The Secretary of Transportation has encouraged DOT operating administrations to expand opportunities for these entrepreneurs to participate fully in all DOT-funded procurements and assisted programs. On May 10, 1994 OSDBU published a Notice in the **Federal Register** requesting proposals from organizations classified as minority trade associations and/or Minority Chambers of Commerce to serve as regional representatives for the LOSP. Based upon the nationwide competition an independent panel recommended and OSDBU selected the following as regional representatives: The National Association of Minority Contractors, Washington, D.C. to represent Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia); Latin Chamber of Commerce U.S.A., Miami, FL. to represent Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee); Metropolitan Chamber of Commerce, Flint, MI. to represent Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin); Hispanic Chamber of Greater Kansas City, Kansas City, MO. to represent Region 7 (Iowa, Kansas, Missouri and